

SIX MONTH EXTENSION OF INTERMODAL SURFACE  
TRANSPORTATION EFFICIENCY ACT OF 1991

SEPTEMBER 25, 1997.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

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Mr. SHUSTER, from the Committee on Transportation and  
Infrastructure, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS AND MINORITY VIEWS

[To accompany H.R. 2516]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom  
was referred the bill (H.R. 2516) to extend the Intermodal Surface  
Transportation Efficiency Act of 1991 through March 31, 1998, hav-  
ing considered the same, report favorably thereon with an amend-  
ment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof  
the following:

**SECTION 1. STATEMENT OF PURPOSE.**

This Act makes funds available for the Federal-aid highway, highway safety,  
motor carrier safety, and mass transportation programs for the first 6 months of fis-  
cal year 1998 by extending the Intermodal Surface Transportation Efficiency Act of  
1991 to ensure the continuation of such programs while a multiyear reauthorization  
is developed. This extension is structured to allow programmatic, apportionment for-  
mula, and funding adjustments for the second 6 months of fiscal year 1998 through  
enactment of a multiyear program.

**SEC. 2. EXTENSION OF FEDERAL-AID HIGHWAY PROGRAM FUNDING.**

(a) IN GENERAL.—Section 1003 of the Intermodal Surface Transportation Effi-  
ciency Act of 1991 (105 Stat. 1918–1922) is amended by adding at the end the fol-  
lowing:

“(d) FEDERAL-AID HIGHWAYS FOR THE PERIOD OCTOBER 1, 1997, THROUGH MARCH  
31, 1998.—

“(1) IN GENERAL.—For Federal-aid highways and highway safety construction programs, \$11,942,375,000 are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) during the period October 1, 1997, through March 31, 1998, and shall be distributed in accordance with this subsection.

“(2) CERTAIN DISCRETIONARY PROGRAMS.—Of the amounts made available by paragraph (1), the Secretary shall deduct \$32,500,000 to carry out section 118(c)(2) of title 23, United States Code, for the period October 1, 1997, through March 31, 1998, and shall deduct \$30,250,000 to carry out the discretionary program under paragraphs (1) and (2) of section 144(g) of such title during such period.

“(3) STATE ALLOCATION PERCENTAGES.—From amounts remaining after making the deductions under paragraph (2) and application of paragraphs (4) and (5), the Secretary shall determine the amount to be apportioned among the States in accordance with the following table:

“State:	Percentage:
Alabama .....	2.0026
Alaska .....	1.0499
Arizona .....	1.4627
Arkansas .....	1.5268
California .....	8.9046
Colorado .....	1.0443
Connecticut .....	1.9229
Delaware .....	0.4057
District of Columbia .....	0.4436
Florida .....	4.4867
Georgia .....	3.2899
Hawaii .....	0.6435
Idaho .....	0.6314
Illinois .....	3.6779
Indiana .....	2.4581
Iowa .....	1.1364
Kansas .....	1.1383
Kentucky .....	1.6617
Louisiana .....	1.4831
Maine .....	0.6458
Maryland .....	1.4512
Massachusetts .....	3.5632
Michigan .....	3.0432
Minnesota .....	1.4547
Mississippi .....	1.1286
Missouri .....	2.2677
Montana .....	0.7857
Nebraska .....	0.7501
Nevada .....	0.6218
New Hampshire .....	0.4764
New Jersey .....	2.6851
New Mexico .....	0.8767
New York .....	5.7882
North Carolina .....	2.7408
North Dakota .....	0.5972
Ohio .....	3.4702
Oklahoma .....	1.5021
Oregon .....	1.1378
Pennsylvania .....	4.5007
Rhode Island .....	0.4708
South Carolina .....	1.6019
South Dakota .....	0.5990
Tennessee .....	2.0954
Texas .....	6.9197
Utah .....	0.6672
Vermont .....	0.4287
Virginia .....	2.4440
Washington .....	1.7603
West Virginia .....	1.1088
Wisconsin .....	2.0159
Wyoming .....	0.5999
Puerto Rico .....	0.4312.

“(4) STATE PROGRAMMATIC DISTRIBUTION.—

“(A) IN GENERAL.—Of the funds to be apportioned to each State under paragraph (3), the Secretary shall ensure that the State is apportioned an amount of such funds, determined under subparagraph (B), for the Interstate maintenance program, the National Highway System, the bridge program, the surface transportation program, the congestion mitigation and air quality improvement program, minimum allocation under section 157 of title 23, United States Code, Interstate reimbursement under section 160 of such title, the donor State bonus under section 1013(c) of the Intermodal Surface Transportation Efficiency Act of 1991, hold harmless under section 1015(a) of such Act, 90 percent of payments adjustments under section 1015(b) of such Act, metropolitan planning under section 134 of such title,

section 1015(c) and an amount equal to the funds provided under sections 1103 through 1108 of such Act, and funding restoration under section 202 of the National Highway System Designation Act of 1995.

“(B) FORMULA.—The amount which each State is to be apportioned under this subsection for each item referred to in subparagraph (A) shall be in the same ratio that each State was apportioned funds for such item or allocated funds under sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991 to the total of all such funds apportioned, and allocated under such sections, to such State for such items for fiscal year 1997.

“(C) MINIMUM ALLOCATION.—Not more than \$319,500,000 of the funds apportioned to States by this subsection for minimum allocation shall not be subject to any obligation limitation.

“(D) SPECIAL RULE.—Amounts apportioned to a State by this subsection attributable to sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991 shall be available to such State for projects eligible for assistance under chapter 1 of title 23, United States Code.

“(E) ADMINISTRATION.—Funds apportioned, and funds allocated, under this subsection shall be administered as if they had been apportioned or allocated, as the case may be, under title 23, United States Code.

“(5) GENERAL OPERATING EXPENSES AND OTHER DEDUCTIONS.—

“(A) GENERAL OPERATING EXPENSES.—After making the determinations and before apportioning funds under paragraphs (3) and (4), the Secretary shall deduct the amount that would be required to be deducted under section 104(a) of title 23, United States Code, from the aggregate of amounts to be apportioned to all States for programs to which the deduction under such section would apply if such section applied to such apportionment.

“(B) TERRITORIAL HIGHWAYS.—After making the determinations and before apportioning funds under paragraphs (3) and (4), the Secretary shall deduct the amount required to be deducted pursuant to section 104(b)(1) of title 23, United States Code, for the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands from the aggregate amounts to be apportioned to all States for the National Highway System under this subsection.

“(6) NATIONAL RECREATIONAL TRAILS PROGRAM.—Section 104(h) of title 23, United States Code, is amended by inserting ‘and \$7,500,000 for the period October 1, 1997, through March 31, 1998’ after ‘1997’.

“(7) WOODROW WILSON BRIDGE.—Section 104(i)(1) of title 23, United States Code, is amended by inserting ‘and for the period October 1, 1997, through March 31, 1998’ after ‘1997’.

“(8) OFF-SYSTEM BRIDGES.—Section 144(g)(3) of title 23, United States Code, is amended by inserting ‘and in the period October 1, 1997, through March 31, 1998’ after ‘1997’.

(b) FEDERAL LANDS HIGHWAYS.—Section 1003(a)(6) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1919) is amended—

(1) in subparagraph (A) by inserting “and \$95,500,000 for the period October 1, 1997, through March 31, 1998” before the period;

(2) in subparagraph (B)—

(A) by striking “and” following “1995,”; and

(B) by inserting “and \$86,000,000 for the period October 1, 1997, through March 31, 1998” before the period; and

(3) in subparagraph (C)—

(A) by striking “and” following “1995,”; and

(B) by inserting “, and \$42,000,000 for the period October 1, 1997, through March 31, 1998” before the period.

(c) CERTAIN ALLOCATED PROGRAMS.—

(1) HIGHWAY USE TAX EVASION.—Section 1040(f)(1) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1992–1993) is amended by inserting “and \$2,500,000 for the period October 1, 1997, through March 31, 1998” before the period at the end of the first sentence.

(2) SCENIC BYWAYS PROGRAM.—Section 1047(d) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1998) is amended—

(A) by striking “and” following “1994,”; and

(B) by inserting “, and \$7,000,000 for the period October 1, 1997, through March 31, 1998” before the period at the end of the first sentence.

(3) FERRY BOAT CONSTRUCTION.—Section 1064(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2005) is amended—

(A) by striking “and” following “1996,”; and

(B) by inserting “, and \$9,000,000 for the period October 1, 1997, through March 31, 1998” after “1997”.

(d) FISCAL YEAR 1998 OBLIGATION LIMITATION.—

(1) AMENDMENTS TO ISTEA.—Section 1002 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1916–1918) is amended—

(A) in subsection (a)—

(i) by striking “and” at the end of paragraph (5);

(ii) by striking the period at the end of paragraph (6) and inserting “, and”; and

(iii) by inserting after paragraph (6) the following:

“(7) \$21,500,000,000 for fiscal year 1998.”; and

(B) by adding at the end the following:

“(i) SPECIAL RULE FOR FISCAL YEAR 1998.—The Secretary shall distribute on October 1, 1997, 50 percent of the limitation on obligations for Federal-aid highways and highway safety construction programs imposed by the Department of Transportation and Related Agencies Appropriations Act, 1998, and 50 percent of such limitation on July 1, 1998.”.

(2) LIMITATION.—Nothing in this section (including the amendments made by this section) shall apply to any funds made available before October 1, 1997, for carrying out sections 125 and 157 of title 23, United States Code, and sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991.

#### SEC. 3. EXTENSION OF HIGHWAY SAFETY PROGRAMS.

(a) NHSTA HIGHWAY SAFETY PROGRAMS.—Section 2005(1) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2079) is amended by inserting “and \$83,000,000 for the period October 1, 1997, through March 31, 1998” before the period at the end.

(b) ALCOHOL-IMPAIRED DRIVING COUNTERMEASURES.—Section 410 of title 23, United States Code, is amended—

(1) in subsection (c) by striking “5” and inserting “6”;

(2) in subsection (c)(3) by striking “and fifth” and inserting “fifth, and sixth”;

(3) in subsection (d)(2)(B) by striking “two” and inserting “3”; and

(4) in subsection (j)—

(A) by striking “and” following “1997,”; and

(B) by inserting “and \$12,500,000 for the period October 1, 1997, through March 31, 1998” after “1997” the second place it appears.

(c) NATIONAL DRIVER REGISTER.—Section 30308(a) of title 49, United States Code, is amended—

(1) by striking “and” following “1994,”; and

(2) by inserting “, and \$1,855,000 for the period October 1, 1997, through March 31, 1998” after “1996”.

(d) OBLIGATION LIMITATION.—The total of all obligations for highway traffic safety grants under sections 402 and 410 of title 23, United States Code, for fiscal year 1998 shall not exceed \$186,500,000.

#### SEC. 4. FEDERAL TRANSIT PROGRAMS.

(a) EXTENSION.—Title III of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2087–2140) is amended by adding at the end the following:

“SEC. 3049. EXTENSION OF FEDERAL TRANSIT PROGRAMS FOR THE PERIOD OCTOBER 1, 1997, THROUGH MARCH 31, 1998.

“(a) ALLOCATING AMOUNTS.—Section 5309(m) of title 49, United States Code, is amended by inserting ‘and for the period October 1, 1997, through March 31, 1998’ after ‘1997’.

“(b) APPORTIONMENT OF APPROPRIATIONS FOR FIXED GUIDEWAY MODERNIZATION.—Section 5337(a) of title 49, United States Code, is amended by inserting ‘and for the period October 1, 1997, through March 31, 1998’ after ‘1997’.

“(c) AUTHORIZATIONS.—Section 5338 of title 49, United States Code, is amended—

“(1) by adding at the end of subsection (a)(1) the following:

‘(F) \$1,284,792,000 for the period October 1, 1997, through March 31, 1998.’;

“(2) by adding at the end of subsection (a)(2) the following:

‘(F) \$213,869,000 for the period October 1, 1997, through March 31, 1998.’;

“(3) by adding at the end of subsection (b)(1) the following:

‘(F) \$1,162,708,000 for the period October 1, 1997, through March 31, 1998.’;

“(4) in subsection (c) by inserting ‘and not more than \$1,500,000 for the period October 1, 1997, through March 31, 1998’ after ‘1997.’;

“(5) in subsection (e) by inserting ‘and not more than \$3,000,000 is available from the Fund (except the Account) for the Secretary for the period October 1, 1997, through March 31, 1998’ after ‘1997.’;

“(6) in subsection (h)(3) by inserting ‘\$3,000,000 is available for section 5317 for the period October 1, 1997, through March 31, 1998’ after ‘1997’;

“(7) in subsection (j)(5)—

“(A) by striking ‘and’ at the end of subparagraph (B);

“(B) by striking the period at the end of subparagraph (C) and inserting ‘; and’; and

“(C) by adding at the end the following:

“(D) the lesser of \$1,500,000 or an amount the Secretary determines is necessary is available for the period October 1, 1997, through March 31, 1998.”;

“(8) in subsection (k) by striking ‘or (e)’ and inserting ‘(e), or (m)’; and

“(9) by adding at the end the following:

“(m) SECTION 5316 FOR THE PERIOD OCTOBER 1, 1997, THROUGH MARCH 31, 1998.—Not more than the following amounts may be appropriated to the Secretary from the Fund (except the Account) for the period October 1, 1997, through March 31, 1998:

“(1) \$125,000 to carry out section 5316(a) of this title;

“(2) \$1,500,000 to carry out section 5316(b) of this title;

“(3) \$500,000 to carry out section 5316(c) of this title;

“(4) \$500,000 to carry out section 5316(d) of this title; and

“(5) \$500,000 to carry out section 5316(e) of this title.”.

**(b) OBLIGATION LIMITATIONS.—**

(1) DISCRETIONARY GRANTS AND LOANS.—The total of all obligations from the Mass Transit Account of the Highway Trust Fund for carrying out section 5309 of title 49, United States Code, relating to discretionary grants and loans, for fiscal year 1998 shall not exceed \$2,000,000,000.

(2) FORMULA TRANSIT PROGRAMS.—The total of all obligations for formula transit programs under sections 5307, 5310, 5311, and 5336 of title 49, United States Code, for fiscal year 1998 shall not exceed \$2,210,000,000.

**SEC. 5. MOTOR CARRIER SAFETY PROGRAM.**

(a) EXTENSION OF MOTOR CARRIER SAFETY ASSISTANCE PROGRAM FOR PERIOD OCTOBER 1, 1997, THROUGH MARCH 1, 1998.—Section 31104(a) of title 49, United States Code, is amended by adding at the end the following:

“(6) not more than \$45,000,000 for the period October 1, 1997, through March 31, 1998.”.

(b) OBLIGATION LIMITATION.—The total of all obligations for carrying out the motor carrier safety program under section 31102 of title 49, United States Code, for fiscal year 1998 shall not exceed \$85,325,000.

**SEC. 6. EXTENSION OF RESEARCH PROGRAMS.**

(a) BUREAU OF TRANSPORTATION STATISTICS.—Section 6006 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2172–2174) is amended—

(1) by inserting “(a) IN GENERAL.—” before “Chapter I”; and

(2) in subsection (b)—

(A) by striking “and” following “1996.”;

(B) by inserting “, and \$12,500,000 for the period October 1, 1997, through March 31, 1998” after “1997”.

(b) INTELLIGENT TRANSPORTATION SYSTEM.—Section 6058(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2194) is amended by inserting “and \$56,500,000 for the period October 1, 1997, through March 31, 1998” after “1997”.

**PURPOSE**

The purpose of H.R. 2516 is to extend the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) for the six month period October 1, 1997, through March 31, 1998, and provide a total of \$12.4 billion in funding for Federal-aid highway, highway safety and motor carrier safety programs and a total of \$2.4 billion in transit funding from the Highway Trust Fund for the six month period October 1, 1997, through March 31, 1998. The additional funding provided in H.R. 2516 is one-half of the allocation for these pro-

grams contained in the Concurrent Resolution on the Budget for Fiscal Year 1998.

#### BACKGROUND AND NEED

ISTEA authorized the nation's surface transportation laws for a six-year period which expires on September 30, 1997. ISTEA was a milestone in the nation's transportation history; it provided the transition from a federal program based on the completion of the Interstate system to a new Federal-State-local partnership focused on balancing national systems of transportation and State and local empowerment. The reauthorization of ISTEA will shape the direction for Federal surface transportation policy into the 21st century and beyond.

The timely reauthorization of ISTEA is the top priority of the Committee on Transportation and Infrastructure for the 105th Congress. The Committee has held a series of hearings on the reauthorization of ISTEA, focusing on the national highway and transit needs, the operation of the Federal-aid highway and transit grant programs and the impact on the Highway Trust Fund. The outcome of these hearings was a clear message that our nation's transportation needs are not being met and that the funding levels provided in ISTEA are inadequate to ensure the efficient and safe movement of goods, services and people.

Transportation trust fund programs such as the Federal-aid highway and transit programs are different from most Federal programs because they are user-fee funded programs that are supported by motor fuel taxes and other excise taxes deposited into the Highway Trust Fund. The Highway Trust Fund was created in 1956 to provide a self-financing mechanism for transportation investments. Contract authority is provided from the Trust Fund to ensure a stable program necessary for the States to manage and complete efficient transportation planning and project management. The Highway Trust Fund is funded entirely from motor fuel taxes and other highway-related taxes. In fiscal year 1997, a total of \$24.4 billion in tax revenues and \$1.5 billion in interest is expected to be deposited in the Trust Fund. With the redirection of the 4.3 cent fuel tax that had been dedicated to deficit reduction, the amounts deposited into the Highway Trust Fund will increase to \$33 billion in tax revenues and nearly \$3 billion in interest will accrue in fiscal year 2000.

The Transportation and Infrastructure Committee has developed legislation, H.R. 2400, that would reauthorize surface transportation programs through fiscal year 2003. A total of \$218.5 billion would be authorized—\$179.8 billion for highways, \$2.1 billion for safety, and \$36.7 billion for transit over these six years. Because of the increased spending in the bill, the Committee was able to achieve equity while maintaining the ISTEA program structure. H.R. 2400 provides more equity to the donor States by revising and updating current funding formulas used to distribute Federal-aid highway funds to the States while ensuring that no State would receive less in funding than it had in ISTEA (excluding funding for the Interstate Construction and Substitute programs).

In addition to substantially increasing funding for current programs, H.R. 2400 creates new initiatives to address pressing na-

tional needs, such as a program to address high cost Interstate reconstruction projects, dedicated funding for border infrastructure and safety improvements, a program to improve safety on certain high risk roads, a general fund program to fund welfare-to-work initiatives, and funding devoted to a national corridor planning and development program.

The Subcommittee on Surface Transportation considered and marked up H.R. 2400 on September 10, 1997, and the Committee marked up the bill on September 24, 1997. Prior to ordering the bill reported, however, the Committee suspended further action because of concerns that the amount of funding provided exceeds the budget allocation for transportation included in the budget agreement approved earlier this year. The Congressional Budget Office has preliminarily estimated that the funding in the bill is \$27 billion over the budget outlay allocation for the five year period included in the budget agreement. Because of current budget concerns, the Committee will withhold further action and final approval of H.R. 2400 until the resources necessary to fund the bill can be provided. If immediate efforts to provide additional budget resources this year are not successful, it is the intention of the Committee to work through the budget process next year to secure the additional budget allocations necessary to complete action on H.R. 2400 early in the year. On September 24, 1997, the Committee passed the attached resolution supporting the programs and principles contained in H.R. 2400.

It is important to note that the only reason the funding levels contained in H.R. 2400 cannot be met now is due to the budget treatment of the Highway Trust Fund and the fact that spending from the Trust Fund is being constrained to offset the size of the deficit. The Committee has long been concerned about using the Trust Fund for such purposes and has for many years supported taking the Highway Trust Fund, and other transportation trust funds, off budget so that there would be less incentive to use trust fund surpluses to mask the deficit. On April 17, 1996, the House of Representatives passed the Truth in Budgeting Act (H.R. 842) by a vote of 284–143. Identical legislation, H.R. 4, was introduced in the 105th Congress, and currently has 246 cosponsors. The text of H.R. 4 is incorporated in H.R. 2400.

All of the funding authorized in H.R. 2400 will be fully paid for by revenues flowing into the Highway Trust Fund. The current balance in the Highway Trust Fund is \$24 billion. Even with the increased spending provided in H.R. 2400, the balance in the Highway Trust Fund would continue to grow—to an estimated \$50 billion—before ultimately stabilizing. Under the budget agreement, highway and transit spending would be \$42 billion below tax receipts and the Highway Trust Fund balance would skyrocket to an unacceptable \$81 billion. The Committee renews its call to return to the principle of spending user fees collected from American citizens and paid into the Highway Trust Fund for their stated and intended purpose of improving transportation systems. The Trust Fund must not continue to be used to subsidize other general fund spending or mask the federal deficit.

The Committee is committed to achieving a balanced budget by the year 2002. H.R. 2400 is compatible with this goal. CBO now es-

timates \$135 billion in additional revenues, over and above those in the 1997 budget agreement, will be realized over the next five years. The Office of Management and Budget has confirmed these estimates. Only about 18 percent of the new revenues would be needed to fully fund H.R. 2400. In addition, OMB now projects spending to be \$76 billion lower than anticipated in the budget agreement. Because of higher revenue projections and lower spending projections, the Committee believes that H.R. 2400 can be fully funded consistent with the current balanced budget agreement.

The Committee approved H.R. 2516 to ensure that Highway Trust Fund resources continue to flow to the States until a long-term reauthorization bill with adequate spending can be enacted. Together with unobligated balances carried by the States, H.R. 2516 will provide needed resources for most of fiscal year 1998.

There are some disadvantages to a short-term extension of ISTEA. However, the Committee believes that it would be irresponsible to reauthorize programs for six years at levels that would result in ballooning Trust Fund balances, that would have dramatic effects on certain States as a result of formula changes, and would not approach the level of transportation funding that the country needs to preserve, let alone improve, our transportation systems.

The funding levels reflected in H.R. 2516 are exactly one-half of the allocation available for surface transportation programs from the Highway Trust Fund in the fiscal year 1998 Budget Resolution (see table 1). The total funding made available from the Highway Account of the Highway Trust Fund is \$12.4 billion: of which \$317 million of those funds are used to fund allocated programs within the Federal-aid highway program at one-half the funding levels provided in ISTEA for 1997; \$95.5 million is provided during the six month period for highway safety programs administered by the National Highway Traffic Safety Administration; and \$45 million is provided for administering the Motor Carrier Safety Assistance Program for the six month period.

The remaining \$11.9 billion is to be distributed to the States for the Federal-aid highway program. This \$11.9 billion will be available in addition to the \$12.5 billion in unobligated balances from prior fiscal years, for a total of \$24 billion in contract authority available to the States. The funding provided in this bill together with the States' unobligated balances should permit most States to continue their fiscal year 1998 highway programs with a minimum of interruption.

The bill provides \$2.4 billion in funding from the Mass Transit Account of the Highway Trust Fund and authorizes \$214 million in funding from the General Fund for the federal transit programs. This \$2.7 billion is distributed among discretionary grants, formula grants, planning, research and administrative expenses at the proportion provided in the House-passed version of the Department of Transportation Appropriations bill for fiscal year 1998.

## SECTION-BY-SECTION ANALYSIS

### SECTION 1. STATEMENT OF PURPOSE

The purpose of this act is to extend ISTEA for a period of six months from October 1, 1997, through March 31, 1998. This exten-



sion will allow the ISTEA programs to continue while a longer term reauthorization bill is developed. Policy changes, including changes to the formula for distributing funds, would be made in a multi-year reauthorization of ISTEA that would go into effect in the final six months of fiscal year 1998.

## SECTION 2. EXTENSION OF FEDERAL-AID HIGHWAY PROGRAM FUNDING

Subsection (a) amends ISTEA by adding a new subsection (d) to Section 1003. This new subsection provides \$11.9 billion in contract authority to fund the Federal-aid highway program for the first and second quarters of fiscal year 1998. The Interstate maintenance and discretionary bridge programs are continued at one-half the 1997 enacted level.

The funding is distributed to the States using the same overall percentage of all funds that they received in fiscal year 1997. After determining the aggregate amount each State receives, the Secretary shall then establish the amount to be apportioned to the State for each Federal-aid program at the same ratio as the State's funds were apportioned in 1997.

For example, if a State received 10 percent of its 1997 funds for the bridge program, then the State would receive 10 percent of its 1998 funds for the bridge program. The funding apportionments for each State are not based on the calculation of the underlying formula for each program, but are based on the actual proportion that funding for such program was of a State's overall 1997 funding percentage. This is true for all identified program categories and any equity adjustments.

The programs categories in which States will receive funds under H.R. 2516 are: Interstate maintenance, national highway system, bridge program, surface transportation program, congestion mitigation and air quality improvement program, metropolitan planning, restoration funds, donor state bonus, adjustments under section 1015 of ISTEA, including hold harmless, 90 percent of payments and donor state bonus, minimum allocation, interstate reimbursement, and projects made available under sections 1103 through 1108 (see table 2). Any funds a State may receive in 1998 due to receiving funds in 1997 under section 1103 through 1108 of ISTEA can be used by the State on any project eligible under Chapter 1 of title 23 of the United States Code.

The underlying program requirements contained in title 23 shall apply to funds apportioned under this bill, including any set-asides and other distributions of funds required under ISTEA. Funds apportioned shall be administered consistent with the requirements of title 23.

The deductions made for administrative expenses and for territorial highways are authorized to be made from the programs to which they are currently applicable and before the apportionments are made to the States. The set-aside made from administrative expenses for the recreational trails program is specifically continued for the period of this extension. The authorization for administrative funds (deducted by the Secretary under 23 U.S.C. 104) for work associated with the Woodrow Wilson Bridge is continued. In the 6-month period of this bill, the Secretary would be able to use

up to half of the funds required for work related to the bridge in fiscal year 1998.

The requirement that a certain amount of a State's bridge funds be spent on bridges not on the Federal-aid highway system is continued.

Subsection (b) authorizes funding for the Federal Lands program (Indian reservation roads, public lands highways, and park roads and parkways) for the first six months of fiscal year 1998 at half the level authorized for fiscal year 1997.

Subsection (c) authorizes funding for the highway use tax evasion, scenic byways, and ferry boat programs for the first six months of fiscal year 1998 at half the level authorized for fiscal year 1997.

Subsection (d) provides a full year of obligation authority and the calculation of minimum allocation. The bill contains an overall obligation limitation of \$21.5 billion for fiscal year 1998. This is the same level contained in the House and Senate passed appropriations bills for fiscal year 1998. Fifty percent of the obligation limitation would be distributed at the start of the fiscal year based on the funds appropriated in this bill for the first half of fiscal year 1998. The remaining fifty percent of the obligation limitation would be distributed based on the funds contained in a subsequent surface transportation authorization act, assuming enactment by July 1, 1998. Should a multi-year reauthorization bill not be enacted by July 1, 1998, then the 50 percent of the obligation limitation that is being withheld would be released. It, too, would be distributed based on the funds contained in this bill. The second fifty percent of the obligation limitation is withheld in order to make adjustments should the second bill contain formulas that distribute funds differently than in fiscal year 1997. Funds for fiscal year 1998 apportioned to States that are attributable to funds that had been made available under sections 1103 through 1108 of ISTEA are not exempt from the obligation limitation under this bill.

The only funds provided in this bill that are exempt from the obligation limitation are \$319.5 million attributable to minimum allocation. This amount is specifically set in the bill and is equivalent to the one-half year amount in the budget baseline for such programs. The calculated total cost of minimum allocation for the half year is \$350 million. The difference of \$30.5 million would be subject to the obligation limitation and would be included in the calculation of the distribution of the limitation to the States. The minimum allocation is calculated based on the percentage of funds States received for that program in fiscal year 1997 the same as for the other programs.

However, the bill specifies that nothing in H.R. 2516 affects any funds made available prior to fiscal year 1998 for carrying out the minimum allocation program, the emergency relief program or project funds made available under sections 1103–1108 of ISTEA.

### SECTION 3. EXTENSION OF HIGHWAY SAFETY PROGRAMS

Subsection (a) continues the section 402 program administered by the National Highway Traffic Safety Administration (NHTSA), to be funded for the first six months of fiscal year 1998 at half the level authorized for fiscal year 1997. Beginning in fiscal year 1997,

the Federal Highway Administration (FHWA) and the NHTSA 402 programs have been administered by the Department in a more coordinated fashion and under one obligation limitation set in the Appropriations Act. Due to the lack of an obligation limitation for the FHWA 402 program, this bill provides one-half year's contract authority of \$10 million for the FHWA 402 as an addition to the NHTSA 402 program level of \$73 million. Providing contract authority for the FHWA 402 program without an obligation limitation would cause a budget compliance problem.

Subsection (b) continues the section 410 program for the first six months of fiscal year 1998 at half the level authorized for fiscal year 1997.

Subsection (c) authorizes 402 funds for funding the National Driver Register.

#### SECTION 4. EXTENSION OF FEDERAL TRANSIT PROGRAMS

This Section amends ISTEA by inserting a new section at the end of Title III which will provide funding for the six month period October 1, 1997, through March 31, 1998.

Subsection (a) of the new section extends the requirement in section 5309(m)(1) of title 49 for allocating funds among Discretionary programs until March 31, 1998.

Subsection (b) of the new section extends the fixed guideway modernization apportionment formula in section 5337(a) of title 49 until March 31, 1998.

Subsection (c) of the new section amends section 5338 of title 49 to authorize funding for the first six months of fiscal year 1998 for metropolitan planning under section 5303, the transportation improvement program under section 5304, transportation management areas under section 5305, block grants under section 5307, discretionary grants and loans under section 5309, grants and loans for special needs of elderly individuals and individuals with disabilities under section 5310, financial assistance for other than urbanized areas under section 5311, research, development, demonstration, and training projects under section 5312, state planning and research programs under section 5313, national planning and research programs under section 5314, the national mass transportation institute under section 5315, university research institutes under section 5316, transportation centers under section 5317, project management oversight under section 5327, and administrative expenses under section 5334.

#### SECTION 5. EXTENSION OF MOTOR CARRIER SAFETY PROGRAMS

The Motor Carrier Safety Assistance Program is funded for the first six months of fiscal year 1998 at half the level authorized for fiscal year 1997.

#### SECTION 6. EXTENSION OF RESEARCH PROGRAMS

Subsection (a) funds the Bureau of Transportation Statistics for the first six months of fiscal year 1998 at half the level authorized for fiscal year 1997.

Subsection (b) funds the Intelligent Transportation Systems program authorized in ISTEA for the first six months of fiscal year 1998 at half the level authorized for fiscal year 1997.

#### HEARINGS

The Subcommittee on Surface Transportation held six days of hearings during 1997 on reauthorization of the Intermodal Surface Transportation Efficiency Act of 1991. The Committee has not held hearings on the reported legislation.

#### COMMITTEE CONSIDERATION

On September 24, 1997, the Committee met in open session and ordered reported H.R. 2516, as amended, to extend the Intermodal Surface Transportation Efficiency Act of 1991 through March 31, 1998, unanimously by voice vote, a quorum being present.

Clause 2(l)(2)(B) of rule XI requires each committee report to include the total number of votes cast for and against on each roll call vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no recorded votes taken in connection with ordering H.R. 2516 reported.

#### COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, oversight findings and recommendations have been made by the Committee as reflected in this report.

#### COST OF THE LEGISLATION

Clause 7 of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

#### COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, and 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included below.

2. With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 2516.

3. With respect to the requirement of clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2516 from the Director of the Congressional Budget Office.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 25, 1997.*

Hon. BUD SHUSTER,  
*Chairman, Committee on Transportation and Infrastructure, House  
of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2516, a bill to extend the Intermodal Surface Transportation Efficiency Act of 1991 through March 31, 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Clare Doherty (for the federal costs of highway programs) and Kristen Layman (for the federal costs of transit programs and the state and local impact).

Sincerely,

ROBERT A. SUNSHINE  
(for June E. O'Neill, Director).

Enclosure.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

##### *H.R. 2516—A bill to extend the Intermodal Surface Transportation Efficiency Act of 1991 through March 31, 1998*

Summary: H.R. 2516 would extend, through March 31, 1998, most of the major programs authorized in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). The bill would provide contract authority of approximately \$15 billion for the first half of fiscal year 1998 for programs carried out by the Federal Highway Administration (FHWA), the National Highway Traffic Safety Administration (NHTSA), and the Federal Transit Administration (FTA). Of that total, \$320 million would be for the FHWA minimum allocation program, which is exempt from the obligation limitation that applies to the bulk of FHWA spending. In addition to providing contract authority, H.R. 2516 would authorize the appropriation of \$214 million for the Federal Transit Administration for the first half of fiscal year 1998. Because H.R. 2516 would affect direct spending, pay-as-you go procedures would apply to the bill.

Following procedures delineated in the Balanced Budget Act of 1997, CBO estimates the total impact of the bill by assuming that the direct spending authority it provides is extended indefinitely at the same annual rate. On this basis, CBO estimates that continued funding at the contract authority levels provided in H.R. 2516 would result in outlays of \$130 billion over the 1998–2002 period—\$123 billion categorized as spending subject to appropriation and \$7 billion (for the exempt programs) categorized as direct spending.

H.R. 2516 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of enacting H.R. 2516 and continuing the programs with direct spending authority at the annualized levels provided for in the bill is shown in the following table.

	By fiscal year, in millions of dollars					
	1997	1998	1999	2000	2001	2002
<b>DIRECT SPENDING</b>						
Baseline Spending under Current Law:						
Estimated Budget Authority <sup>1</sup> .....	27,228	27,967	28,431	29,074	29,715	30,373
Estimated Outlays <sup>2</sup> .....	2,057	2,052	1,650	1,346	1,162	1,064
Proposed Changes, including Baseline Changes in 1998 and Subsequent Years from Enacting H.R. 2516:						
Estimated Budget Authority .....	0	1,728	1,264	621	-20	-678
Estimated Outlays <sup>2</sup> .....	0	0	-2	-8	-19	-33
Total Spending (assuming enactment of H.R. 2516 and continuation of its funding levels beyond March 31, 1998):						
Estimated Budget Authority .....	27,228	29,695	29,695	29,695	29,695	29,695
Estimated Outlays <sup>2</sup> .....	2,057	2,052	1,649	1,337	1,143	1,031
<b>SPENDING SUBJECT TO APPROPRIATION</b>						
Spending Under Current Law:						
Budget Authority .....	905	0	0	0	0	0
Estimated Outlays <sup>2</sup> .....	22,300	22,251	22,397	22,753	23,294	23,924
Proposed Changes, including Baseline Changes in 1998 and Subsequent Years from Enacting H.R. 2516:						
Estimated Authorization Level .....	0	214	0	0	0	0
Estimated Outlays <sup>2</sup> .....	0	578	2,108	2,291	2,026	1,642
Total Spending (assuming enactment of H.R. 2516 and continuation of its funding levels beyond March 31, 1998):						
Estimated Authorization Level .....	905	214	0	0	0	0
Estimated Outlays .....	22,300	22,830	24,505	25,043	25,320	25,566

<sup>1</sup> The 1997 level is the amount of contract authority provided under ISTEA. The 1998–2002 levels are the amounts included in the budget resolution baseline.

<sup>2</sup> Outlays from programs except from the obligation limitation (minimum allocation, emergency relief, demonstration projects).

<sup>3</sup> Outlays from the mandatory contract authority for programs that are subject to the obligation limitation, and from discretionary appropriations.

<sup>4</sup> Outlays from new authorization in addition to the programs subject to the obligation limitation.

The costs of this legislation fall within budget function 400 (transportation).

Basis of estimate: Enacting H.R. 2516 would affect both spending subject to appropriation and direct spending. In particular, the bill would provide \$15 billion in contract authority, which is a form of direct spending, for the Federal-Aid Highways program and for some of the FTA and NHTSA spending. Most of the outlays from contract authority are controlled by annual obligation limitations imposed through the appropriations process. All of the projected outlays controlled by appropriations action, whether from appropriated budget authority or annually limited contract authority, are shown in the bottom half of the table (“Spending Subject to Appropriation”). Because the minimum allocation program is exempt from obligation limitations, outlays for that program as well as for other exempt programs authorized under ISTEA are included in the top half of the table (“Direct Spending”).

For all of the direct spending programs (those with funding provided by contract authority), CBO projects spending at the annualized level derived from the half-year amounts contained in the bill. That projection results in a total of \$148 billion in estimated contract authority for the 1998–2002 period. For the transit programs that are funded with appropriated budget authority, CBO estimates that implementing this bill would result in new discretionary spending of \$214 million over the 1998–2002 period.

(Under Congressional scorekeeping procedures, such authorizations of appropriations are not extended beyond the amounts provided in the bill.)

Direct spending: For the first half of fiscal year 1998, the bill would provide contract authority of \$12 billion for the portions of FHWA's Federal-Aid Highways program that are subject to the obligation limitation, \$96 million for the NHTSA safety grants program, \$45 million for the FHWA motor carrier safety grant program, \$1 billion for the FTA discretionary grant program, and \$1 billion for the FTA formula grant program. H.R. 2516 also would extend funding for the minimum allocation program, one of the Federal-Aid Highways programs that is exempt from annual obligation limitations. The bill would provide \$319.5 million for this program for the first six months of fiscal year 1998.

To project future contract authority based on amounts authorized in this bill, CBO extrapolated the half-year authorization to a full-year and froze that level—\$29.7 billion—through fiscal year 2002. This extension beyond 1998 reflects the requirement in the Balanced Budget Act of 1997 that, in preparing a budget baseline, existing mandatory programs with current-year outlays greater than 450 million shall be assumed to continue, even if they expire under current law. That act requires that projections be made assuming the program continues to operate under the law as in effect immediately before the program's expiration. CBO interprets this requirement to mean that projections of contract authority provided in this bill should be equal, in each year, to the full-year, annualized level provided for 1998.

Spending subject to appropriation: For purposes of this estimate, CBO assumes that the amount authorized for transit programs for the first half of fiscal year 1998 will be appropriated near the start of the fiscal year. Outlay estimates for all of the spending subject to appropriation are based on historical spending rates for the FHWA, FTA, and NHTSA programs. Because most of the outlays from the contract authority are governed by obligation limitations in appropriations acts and are subject to liquidating appropriations, they are considered discretionary and so are included in the table under estimated outlays subject to appropriation. To estimate such outlays, CBO used the obligation limitations specified in the bill.

Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. CBO's estimate of the bill's impact on outlays from direct spending is summarized in the following table for fiscal years 1998–2007. For purposes of enforcing pay-as-you-go procedures, only the effects in the budget year and the succeeding four years are counted. Also, only direct spending outlays are subject to pay-as-you-go requirements; the discretionary outlays from contract authority subject to obligation limitations are not considered for pay-as-you-go purposes.

## SUMMARY OF EFFECTS ON DIRECT SPENDING AND RECEIPTS

	By fiscal year, in millions of dollars									
	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Changes in outlays .....	0	-2	-8	-19	-33	-47	-63	-80	-97	-115
Changes in receipts <sup>1</sup>										

<sup>1</sup> Not applicable.

CBO projects that enacting H.R. 2516 would result in pay-as-you-go savings (relative to the current baseline) because the bill would establish a funding level for the minimum allocation program that is below the baseline levels for all years after 1998.

Estimated impact on State, local, and tribal governments: H.R. 2516 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. Most of the funding authorized in this bill would be redistributed to states, in the form of grants for transportation purposes.

Estimated impact on the private sector: H.R. 2516 contains no private-sector mandates as defined in UMRA.

Estimate prepared by: Federal costs—Clare Doherty for highways programs and Kristen Layman for transit programs; impact on State, local, and tribal governments—Kristen Layman.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

## CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause (2)(1)(4) of rule XI of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

**INTERMODAL SURFACE TRANSPORTATION EFFICIENCY  
ACT OF 1991**

\* \* \* \* \*

**TITLE I—SURFACE TRANSPORTATION**

**Part A—Title 23 Programs**

\* \* \* \* \*



**SEC. 1002. OBLIGATION CEILING.**

(a) GENERAL LIMITATION.—Notwithstanding any other provision of law (other than subsection (f) of this section), the total of all obligations for Federal-aid highways and highway safety construction programs shall not exceed—

(1) \* \* \*

\* \* \* \* \*

(5) \$18,357,000,000 for fiscal year 1996; [and]  
 (6) \$18,338,000,000 for fiscal year 1997[.]; and  
 (7) \$21,500,000,000 for fiscal year 1998.

\* \* \* \* \*

(i) SPECIAL RULE FOR FISCAL YEAR 1998.—*The Secretary shall distribute on October 1, 1997, 50 percent of the limitation on obligations for Federal-aid highways and highway safety construction programs imposed by the Department of Transportation and Related Agencies Appropriations Act, 1998, and 50 percent of such limitation on July 1, 1998.*

**SEC. 1003. AUTHORIZATION OF APPROPRIATIONS.**

(a) FROM THE HIGHWAY TRUST FUND.—For the purpose of carrying out the provisions of title 23, United States Code, the following sums are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account):

(1) \* \* \*

\* \* \* \* \*

(6) FEDERAL LANDS HIGHWAY PROGRAM.—

(A) INDIAN RESERVATION ROADS.—For Indian reservation roads \$159,000,000 for fiscal year 1992 and \$191,000,000 for each of fiscal years 1993, 1994, 1995, 1996, and 1997 and \$95,500,000 for the period October 1, 1997, through March 31, 1998.

(B) PUBLIC LANDS HIGHWAYS.—For public lands highways \$143,000,000 for fiscal year 1992, \$171,000,000 for each of fiscal years 1993, 1994, and 1995, [and] \$172,000,000 for each of fiscal years 1996 and 1997 and \$86,000,000 for the period October 1, 1997, through March 31, 1998.

(C) PARKWAYS AND PARK HIGHWAYS.—For parkways and park highways \$69,000,000 for fiscal year 1992, \$83,000,000 for each of fiscal years 1993, 1994, and 1995, [and] \$84,000,000 for each of fiscal years 1996 and 1997, and \$42,000,000 for the period October 1, 1997, through March 31, 1998.

\* \* \* \* \*

(d) FEDERAL-AID HIGHWAYS FOR THE PERIOD OCTOBER 1, 1997, THROUGH MARCH 31, 1998.—

(1) IN GENERAL.—*For Federal-aid highways and highway safety construction programs, \$11,942,375,000 are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) during the period October 1, 1997, through March 31, 1998, and shall be distributed in accordance with this subsection.*

(2) *CERTAIN DISCRETIONARY PROGRAMS.*—Of the amounts made available by paragraph (1), the Secretary shall deduct \$32,500,000 to carry out section 118(c)(2) of title 23, United States Code, for the period October 1, 1997, through March 31, 1998, and shall deduct \$30,250,000 to carry out the discretionary program under paragraphs (1) and (2) of section 144(g) of such title during such period.

(3) *STATE ALLOCATION PERCENTAGES.*—From amounts remaining after making the deductions under paragraph (2) and application of paragraphs (4) and (5), the Secretary shall determine the amount to be apportioned among the States in accordance with the following table:

<b>State:</b>	<b>Percentage:</b>
Alabama .....	2.0026
Alaska .....	1.0499
Arizona .....	1.4627
Arkansas .....	1.5268
California .....	8.9046
Colorado .....	1.0443
Connecticut .....	1.9229
Delaware .....	0.4057
District of Columbia .....	0.4436
Florida .....	4.4867
Georgia .....	3.2899
Hawaii .....	0.6435
Idaho .....	0.6314
Illinois .....	3.6779
Indiana .....	2.4581
Iowa .....	1.1364
Kansas .....	1.1383
Kentucky .....	1.6617
Louisiana .....	1.4831
Maine .....	0.6458
Maryland .....	1.4512
Massachusetts .....	3.5632
Michigan .....	3.0432
Minnesota .....	1.4547
Mississippi .....	1.1286
Missouri .....	2.2677
Montana .....	0.7857
Nebraska .....	0.7501
Nevada .....	0.6218
New Hampshire .....	0.4764
New Jersey .....	2.6851
New Mexico .....	0.8767
New York .....	5.7882
North Carolina .....	2.7408
North Dakota .....	0.5972
Ohio .....	3.4702
Oklahoma .....	1.5021
Oregon .....	1.1378
Pennsylvania .....	4.5007
Rhode Island .....	0.4708
South Carolina .....	1.6019
South Dakota .....	0.5990
Tennessee .....	2.0954
Texas .....	6.9197
Utah .....	0.6672
Vermont .....	0.4287
Virginia .....	2.4440
Washington .....	1.7603
West Virginia .....	1.1088
Wisconsin .....	2.0159
Wyoming .....	0.5999
Puerto Rico .....	0.4312.

(4) *STATE PROGRAMMATIC DISTRIBUTION.*—

(A) *IN GENERAL.*—Of the funds to be apportioned to each State under paragraph (3), the Secretary shall ensure that the State is apportioned an amount of such funds, determined under subparagraph (B), for the Interstate maintenance program, the National Highway System, the bridge program, the surface transportation program, the congestion mitigation and air quality improvement program, minimum allocation under section 157 of title 23, United States Code, Interstate reimbursement under section 160 of such title, the donor State bonus under section 1013(c) of the Intermodal Surface Transportation Efficiency Act of 1991, hold harmless under section 1015(a) of such Act, 90 percent of payments adjustments under section 1015(b) of such Act, metropolitan planning under section 134 of such title, section 1015(c) and an amount equal to the funds provided under sections 1103 through 1108 of such Act, and funding restoration under section 202 of the National Highway System Designation Act of 1995.

(B) *FORMULA.*—The amount which each State is to be apportioned under this subsection for each item referred to in subparagraph (A) shall be in the same ratio that each State was apportioned funds for such item or allocated funds under sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991 to the total of all such funds apportioned, and allocated under such sections, to such State for such items for fiscal year 1997.

(C) *MINIMUM ALLOCATION.*—Not more than \$319,500,000 of the funds apportioned to States by this subsection for minimum allocation shall not be subject to any obligation limitation.

(D) *SPECIAL RULE.*—Amounts apportioned to a State by this subsection attributable to sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991 shall be available to such State for projects eligible for assistance under chapter 1 of title 23, United States Code.

(E) *ADMINISTRATION.*—Funds apportioned, and funds allocated, under this subsection shall be administered as if they had been apportioned or allocated, as the case may be, under title 23, United States Code.

(5) *GENERAL OPERATING EXPENSES AND OTHER DEDUCTIONS.*—

(A) *GENERAL OPERATING EXPENSES.*—After making the determinations and before apportioning funds under paragraphs (3) and (4), the Secretary shall deduct the amount that would be required to be deducted under section 104(a) of title 23, United States Code, from the aggregate of amounts to be apportioned to all States for programs to which the deduction under such section would apply if such section applied to such apportionment.

(B) *TERRITORIAL HIGHWAYS.*—After making the determinations and before apportioning funds under paragraphs (3) and (4), the Secretary shall deduct the amount required to be deducted pursuant to section 104(b)(1) of title 23,

*United States Code, for the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands from the aggregate amounts to be apportioned to all States for the National Highway System under this subsection.*

(6) *NATIONAL RECREATIONAL TRAILS PROGRAM.*—Section 104(h) of title 23, United States Code, is amended by inserting “and \$7,500,000 for the period October 1, 1997, through March 31, 1998” after “1997”.

(7) *WOODROW WILSON BRIDGE.*—Section 104(i)(1) of title 23, United States Code, is amended by inserting “and for the period October 1, 1997, through March 31, 1998” after “1997”.

(8) *OFF-SYSTEM BRIDGES.*—Section 144(g)(3) of title 23, United States Code, is amended by inserting “and in the period October 1, 1997, through March 31, 1998” after “1997”.

\* \* \* \* \*

#### **SEC. 1040. HIGHWAY USE TAX EVASION PROJECTS.**

(a) \* \* \*

\* \* \* \* \*

(f) **FUNDING.**—

(1) **HIGHWAY TRUST FUND.**—There shall be available to the Secretary for carrying out this section, out of the Highway Trust Fund (other than the Mass Transit Account), \$5,000,000 for each of fiscal years 1992, 1993, 1994, 1995, 1996, and 1997 and \$2,500,000 for the period October 1, 1997, through March 31, 1998. Such sums shall be available for obligation in the same manner and to the same extent as if such sums were apportioned under chapter 1 of title 23, United States Code; except that the Federal share for projects carried out under this section shall be 100 percent and the sums shall remain available until expended.

\* \* \* \* \*

#### **SEC. 1047. SCENIC BYWAYS PROGRAM.**

(a) \* \* \*

\* \* \* \* \*

(d) **FUNDING.**—There shall be available to the Secretary for carrying out this section (other than subsection (f)), out of the Highway Trust Fund (other than the Mass Transit Account), \$1,000,000 for fiscal year 1992, \$3,000,000 for fiscal year 1993, \$4,000,000 for fiscal year 1994, [and] \$14,000,000 for each of the fiscal years 1995, 1996, and 1997, and \$7,000,000 for the period October 1, 1997, through March 31, 1998. Such sums shall remain available until expended.

\* \* \* \* \*

#### **SEC. 1064. CONSTRUCTION OF FERRY BOATS AND FERRY TERMINAL FACILITIES.**

(a) \* \* \*

\* \* \* \* \*

(c) **FUNDING.**—There shall be available, out of the Highway Trust Fund (other than the Mass Transit Account), to the Secretary for

obligation at the discretion of the Secretary \$14,000,000 for fiscal year 1992, \$17,000,000 per fiscal year for each of fiscal years 1993, 1994, 1995, and 1996, **[and]** \$18,000,000 for fiscal year 1997, *and \$9,000,000 for the period October 1, 1997, through March 31, 1998* in carrying out this section. Such sums shall remain available until expended.

\* \* \* \* \*

## TITLE II—HIGHWAY SAFETY

### PART A—HIGHWAY SAFETY GRANT PROGRAMS

\* \* \* \* \*

#### SEC. 2005. AUTHORIZATION OF APPROPRIATIONS.

For purposes of carrying out the provisions of title 23, United States Code, the following sums are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account):

(1) NHTSA HIGHWAY SAFETY PROGRAMS.—For carrying out section 402 of title 23, United States Code, by the National Highway Traffic Safety Administration \$126,000,000 for fiscal year 1992, \$171,000,000 for each of fiscal years 1993, 1994, 1995, and 1996, and \$146,000,000 for fiscal year 1997 *and \$83,000,000 for the period October 1, 1997, through March 31, 1998*.

\* \* \* \* \*

## TITLE III—FEDERAL TRANSIT ACT AMENDMENTS OF 1991

\* \* \* \* \*

#### SEC. 3049. EXTENSION OF FEDERAL TRANSIT PROGRAMS FOR THE PERIOD OCTOBER 1, 1997, THROUGH MARCH 31, 1998.

(a) *ALLOCATING AMOUNTS.*—Section 5309(m) of title 49, United States Code, is amended by inserting “and for the period October 1, 1997, through March 31, 1998” after “1997”.

(b) *APPORTIONMENT OF APPROPRIATIONS FOR FIXED GUIDEWAY MODERNIZATION.*—Section 5337(a) of title 49, United States Code, is amended by inserting “and for the period October 1, 1997, through March 31, 1998” after “1997”.

(c) *AUTHORIZATIONS.*—Section 5338 of title 49, United States Code, is amended—

- (1) by adding at the end of subsection (a)(1) the following:  
“(F) \$1,284,792,000 for the period October 1, 1997, through March 31, 1998.”;
- (2) by adding at the end of subsection (a)(2) the following:  
“(F) \$213,869,000 for the period October 1, 1997, through March 31, 1998.”;
- (3) by adding at the end of subsection (b)(1) the following:  
“(F) \$1,162,708,000 for the period October 1, 1997, through March 31, 1998.”;

(4) in subsection (c) by inserting “and not more than \$1,500,000 for the period October 1, 1997, through March 31, 1998” after “1997”;

(5) in subsection (e) by inserting “and not more than \$3,000,000 is available from the Fund (except the Account) for the Secretary for the period October 1, 1997, through March 31, 1998” after “1997”;

(6) in subsection (h)(3) by inserting “\$3,000,000 is available for section 5317 for the period October 1, 1997, through March 31, 1998” after “1997”;

(7) in subsection (j)(5)—

(A) by striking “and” at the end of subparagraph (B);

(B) by striking the period at the end of subparagraph (C) and inserting “; and”; and

(C) by adding at the end the following:

“(D) the lesser of \$1,500,000 or an amount the Secretary determines is necessary is available for the period October 1, 1997, through March 31, 1998.”;

(8) in subsection (k) by striking “or (e)” and inserting “(e), or (m)”; and

(9) by adding at the end the following:

“(m) SECTION 5316 FOR THE PERIOD OCTOBER 1, 1997, THROUGH MARCH 31, 1998.—Not more than the following amounts may be appropriated to the Secretary from the Fund (except the Account) for the period October 1, 1997, through March 31, 1998:

“(1) \$125,000 to carry out section 5316(a) of this title;

“(2) \$1,500,000 to carry out section 5316(b) of this title;

“(3) \$500,000 to carry out section 5316(c) of this title;

“(4) \$500,000 to carry out section 5316(d) of this title; and

“(5) \$500,000 to carry out section 5316(e) of this title.”

## TITLE IV—MOTOR CARRIER ACT OF 1991

\* \* \* \* \*

### SEC. 6006. BUREAU OF TRANSPORTATION STATISTICS.

(a) *IN GENERAL*.—Chapter I of title 49, United States Code, is amended by adding at the end the following new section:

#### “§ 111. Bureau of Transportation Statistics

“(a) *ESTABLISHMENT*.—There is established in the Department of Transportation a Bureau of Transportation Statistics.

\* \* \* \* \*

(b) *FUNDING*.—There shall be available from the Highway Trust Fund (other than the Mass Transit Account) only for carrying out the amendment made by subsection (a) \$5,000,000 for fiscal year 1992, \$10,000,000 for fiscal year 1993, \$15,000,000 per fiscal year for each of fiscal years 1994 and 1995, \$20,000,000 for fiscal year 1996, [and] \$25,000,000 for fiscal year 1997, and \$12,500,000 for the period October 1, 1997, through March 31, 1998. Funds authorized by this subsection shall be available for obligation in the same

manner as if such funds were apportioned under chapter 1 of title 23, United States Code.

\* \* \* \* \*

## TITLE VI—RESEARCH

### PART A—PROGRAMS, STUDIES, AND ACTIVITIES

\* \* \* \* \*

#### SEC. 6058. FUNDING.

(a) \* \* \*

(b) OTHER ITS ACTIVITIES.—There is authorized to be appropriated to the Secretary for carrying out this part (other than section 6056), out of the Highway Trust Fund (other than the Mass Transit Account), \$23,000,000 for fiscal year 1992 and \$27,000,000 per fiscal year for each of fiscal years 1993 through 1997 *and \$56,500,000 for the period October 1, 1997, through March 31, 1998.*

\* \* \* \* \*

---

## TITLE 23, UNITED STATES CODE

\* \* \* \* \*

### CHAPTER 1—FEDERAL-AID HIGHWAYS

\* \* \* \* \*

#### § 104. Apportionment

(a) \* \* \*

\* \* \* \* \*

(h) NATIONAL RECREATIONAL TRAILS FUNDING.—In addition to funds made available from the National Recreational Trails Trust Fund, the Secretary shall obligate, from administrative funds (contract authority) deducted under subsection (a), to carry out section 1302 of the Intermodal Surface Transportation Efficiency Act of 1991 (16 U.S.C. 1261) \$15,000,000 for each of fiscal years 1996 and 1997 *and \$7,500,000 for the period October 1, 1997, through March 31, 1998.*

(i) WOODROW WILSON MEMORIAL BRIDGE.—

(1) EXPENDITURE.—From any available administrative funds deducted under subsection (a), the Secretary shall obligate such sums as are necessary for each of fiscal years 1996 and 1997 *and for the period October 1, 1997, through March 31, 1998* for the rehabilitation of the Woodrow Wilson Memorial Bridge and for environmental studies and documentation, planning, preliminary engineering and design, and final engineering for a new crossing of the Potomac River as part of the

Project, as defined by section 404 of the Woodrow Wilson Memorial Bridge Authority Act of 1995.

\* \* \* \* \*

**§ 144. Highway bridge replacement and rehabilitation program**

(a) \* \* \*

\* \* \* \* \*

(g) SET ASIDES.—

(1) \* \* \*

\* \* \* \* \*

(3) OFF-SYSTEM BRIDGES.—Not less than 15 percent nor more than 35 percent of the amount apportioned to each State in each of fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, and 1997 *and in the period October 1, 1997, through March 31, 1998*, shall be expended for projects to replace, rehabilitate, paint or seismic retrofit, or apply calcium magnesium acetate to highway bridges located on public roads, other than those on a Federal-aid system. The Secretary, after consultation with State and local officials, may, with respect to such State, reduce the requirement for expenditure for bridges not on a Federal-aid system when the Secretary determines that such State has inadequate needs to justify such expenditure.

\* \* \* \* \*

**Chapter 4.—HIGHWAY SAFETY**

\* \* \* \* \*

**§ 410. Alcohol-impaired driving countermeasures**

(a) \* \* \*

\* \* \* \* \*

(c) MAXIMUM PERIOD OF ELIGIBILITY; FEDERAL SHARE FOR GRANTS.—No State may receive grants under this section in more than **[5]** 6 fiscal years beginning after September 30, 1992. The Federal share payable for any grant under this section shall not exceed—

(1) \* \* \*

\* \* \* \* \*

(3) in the third, fourth, **[and fifth]** *fifth, and sixth* fiscal years the State receives a grant under this section, 25 percent of the cost of implementing and enforcing in such fiscal year such program.

(d) BASIC GRANT ELIGIBILITY.—A State is eligible for a basic grant under this section in a fiscal year only if such State provides for 5 or more of the following:

(1) \* \* \*

(2)(A) \* \* \*

(B) For each of the last **[two]** 3 fiscal years in which a grant is received, any person with a blood alcohol concentration of



0.08 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated.

\* \* \* \* \*

(j) AUTHORIZATION OF APPROPRIATIONS.—For purposes of carrying out this section, there is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) \$25,000,000 for each of fiscal years 1994 through 1997, [and] an additional \$500,000 for fiscal year 1997 *and \$12,500,000 for the period October 1, 1997, through March 31, 1998.* Amounts made available to carry out this section are authorized to remain available until expended.

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## TITLE 49, UNITED STATES CODE

### SUBTITLE III—GENERAL AND INTERMODAL PROGRAMS

\* \* \* \* \*

#### CHAPTER 53—MASS TRANSPORTATION

\* \* \* \* \*

#### § 5309. Discretionary grants and loans

(a) \* \* \*

\* \* \* \* \*

(m) ALLOCATING AMOUNTS.—(1) Of the amounts available for grants and loans under this section for each of the fiscal years ending September 30, 1993–1997 *and for the period October 1, 1997, through March 31, 1998—*

(A) \* \* \*

\* \* \* \* \*

#### § 5337. Apportionment of appropriations for fixed guideway modernization

(a) PERCENTAGE DISTRIBUTION.—The Secretary of Transportation shall apportion amounts made available for fixed guideway modernization under section 5309 of this title for each of the fiscal years ending September 30, 1993–1997 *and for the period October 1, 1997, through March 31, 1998,* as follows:

(1) \* \* \*

\* \* \* \* \*

#### § 5338. Authorizations

(a) FOR SECTIONS 5303–5306, 5308, 5310, 5311, 5313, 5314, 5317, 5320, 5327, AND 5334(a) and (c) AND SECTION 103(e)(4) OF TITLE 23.—(1) Not more than the following amounts are available from the Mass Transit Account of the Highway Trust Fund for the Secretary of Transportation to carry out sections 5303–5306, 5308,

5310, 5311, 5313, 5314, 5317, 5320, 5327, and 5334(a) and (c) of this title:

(A) \* \* \*

\* \* \* \* \*

(F) *\$1,284,792,000 for the period October 1, 1997, through March 31, 1998.*

(2) In addition to amounts made available under paragraph (1) of this subsection, not more than the following amounts may be appropriated to the Secretary to carry out sections 5303–5306, 5308, 5310, 5311, 5313, 5314, 5317, 5320, 5327, and 5334(a) and (c) of this title and substitute transit projects under section 103(e)(4) of title 23:

(A) \* \* \*

\* \* \* \* \*

(F) *\$213,869,000 for the period October 1, 1997, through March 31, 1998.*

(b) SECTION 5309.—(1) Not more than the following amounts are available from the Account for the Secretary to carry out section 5309 of this title:

(A) \* \* \*

\* \* \* \* \*

(F) *\$1,162,708,000 for the period October 1, 1997, through March 31, 1998.*

(c) SECTION 5315.—The Secretary shall make available in equal amounts from amounts provided under subsections (f) and (g) of this section not more than \$3,000,000 for each of the fiscal years ending September 30, 1993–1997, *and not more than \$1,500,000 for the period October 1, 1997, through March 31, 1998* to carry out section 5315 of this title.

\* \* \* \* \*

(e) SECTION 5317.—(1) Not more than \$6,000,000 is available from the Fund (except the Account) for the Secretary for each of the fiscal years ending September 30, 1993–1997, *and not more than \$3,000,000 is available from the Fund (except the Account) for the Secretary for the period October 1, 1997, through March 31, 1998* to carry out section 5317 of this title.

\* \* \* \* \*

(h) OTHER SET-ASIDES.—Before apportioning in each fiscal year amounts made available or appropriated under subsection (a) of this section, of amounts made available or appropriated under subsections (a) and (b) of this section—

(1) \* \* \*

\* \* \* \* \*

(3) *\$7,000,000 is available for section 5317 for each of the fiscal years ending September 30, 1993–1997 \$3,000,000 is available for section 5317 for the period October 1, 1997, through March 31, 1998.*

\* \* \* \* \*

(j) LIMITATIONS.—Of the amounts available—

(1) \* \* \*

\* \* \* \* \*

(5) under section 5309(m)(1)(C) of this title—

(A) \* \* \*

(B) the lesser of \$2,000,000 or an amount the Secretary determines is necessary for each fiscal year is available for each of the fiscal years ending September 30, 1994–1996; **[and]**

(C) the lesser of \$3,000,000 or an amount the Secretary determines is necessary is available for the fiscal year ending September 30, 1997**[.]; and**

(D) *the lesser of \$1,500,000 or an amount the Secretary determines is necessary is available for the period October 1, 1997, through March 31, 1998.*

(k) GRANTS AS CONTRACTUAL OBLIGATIONS.—(1) A grant or contract approved by the Secretary, that is financed with amounts made available under subsection (a)(1), (b)(1), (c), **[or (e)]** (e), or (m) of this section, is a contractual obligation of the United States Government to pay the Government's share of the cost of the project.

\* \* \* \* \*

(m) *SECTION 5316 FOR THE PERIOD OCTOBER 1, 1997, THROUGH MARCH 31, 1998.—Not more than the following amounts may be appropriated to the Secretary from the Fund (except the Account) for the period October 1, 1997, through March 31, 1998:*

- (1) *\$125,000 to carry out section 5316(a) of this title;*
- (2) *\$1,500,000 to carry out section 5316(b) of this title;*
- (3) *\$500,000 to carry out section 5316(c) of this title;*
- (4) *\$500,000 to carry out section 5316(d) of this title; and*
- (5) *\$500,000 to carry out section 5316(e) of this title.*

\* \* \* \* \*

## SUBTITLE VI—MOTOR VEHICLE AND DRIVER PROGRAMS

\* \* \* \* \*

### PART A—GENERAL

\* \* \* \* \*

#### CHAPTER 303—NATIONAL DRIVER REGISTER

\* \* \* \* \*

#### § 30308. Authorization of appropriations

(a) GENERAL.—The Secretary of Transportation shall make available from amounts made available to carry out section 402 of title 23 \$4,000,000 for each of the fiscal years ending September 30, 1993, and September 30, 1994, **[and]** \$2,550,000 for each of fiscal

years 1995, 1996, and \$1,855,000 for the period October 1, 1997, through March 31, 1998, and 1997 to carry out this chapter.

\* \* \* \* \*

## PART B—COMMERCIAL

### CHAPTER 311—COMMERCIAL MOTOR VEHICLE SAFETY

\* \* \* \* \*

#### SUBCHAPTER I—STATE GRANTS

\* \* \* \* \*

#### § 31104. Availability of amounts

(a) GENERAL.—Subject to section 9503(c)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 9503(c)(1)), the following amounts are available from the Highway Trust Fund (except the Mass Transit Account) for the Secretary of Transportation to incur obligations to carry out section 31102 of this title:

(1) \* \* \*

\* \* \* \* \*

(6) not more than \$45,000,000 for the period October 1, 1997, through March 31, 1998.

**Table 1**  
**Funding Summary H.R. 2516**  
**Six Month ISTEA Extension**  
(\$ in millions)

**Highway Programs**

Federal Aid Highways	11,942.4
Indian Reservation Roads	95.5
Public Land Highways	86.0
Park Roads and Parkways	42.0
Motor Carrier Safety Grants	45.0
Highway Use Tax Evasion	2.5
Bureau of Transportation Statistics	12.5
Ferry Boat Programs	9.0
Scenic Byways	7.0
Intelligent Transportation Systems	56.5
University Research Institutes	3.1
University Transportation Centers	3.0
Sub-total	12,304.5

**Highway Safety Programs**

NHTSA 402 Safety Grants	83.0
NHTSA 410 Safety Grants	12.5
Sub-total	95.5

**Mass Transit Account Programs**

Discretionary Grants	1,162.7
Formula Grants	1,284.8
Sub-total	2,447.5
Total Contract Authority	14,847.5

Table 2  
Six Month Apportionments by State for FY 1998  
under H.R. 2516

STATE	INTERSTATE MAINTENANCE	NATIONAL HIGHWAY SYSTEM	BRIDGE	SURFACE TRANSPORTATION PROGRAM	CONGESTION MITIGATION & AIR QUALITY	METRO PLANNING	RESTORATION FUNDS	DONOR STATE BONUS	HOLD HARMLESS	ISTEA SEC. 101(g)	90% PAYMENT ADJUSTMENT	MINIMUM ALLOCATION	INTERSTATE REIMBURSEMENT	ISTEA SEC. 1103 thru 1108	GRAND TOTAL	Percentage	
Alabama	28,617	35,533	25,570	42,167	2,723	968	1,619	7,790	5,938	0	50,779	7,199	5,293	16,882	232,108	2.0123%	
Alaska	11,884	29,240	4,594	63,792	2,723	458	1,079	0	1,073	0	0	0	0	0	120,145	1.0416%	
Arizona	32,864	24,799	3,525	31,703	7,305	1,440	1,286	7,447	4,870	0	29,260	18,135	5,293	1,302	199,359	1.4853%	
Arkansas	18,625	27,625	1,400	27,625	2,723	458	1,079	0	1,073	0	0	0	0	0	100,000	0.8891%	
California	150,331	161,381	114,034	177,414	80,615	13,809	8,247	63,139	18,279	0	86,151	45,895	57,377	39,499	1,026,460	8.8911%	
Colorado	28,385	29,055	12,013	39,299	2,723	1,389	1,142	0	0	0	0	0	0	310	119,509	1.0361%	
Connecticut	19,214	31,462	21,795	63,204	12,800	1,332	1,565	0	0	0	0	0	0	60,446	8,478	220,233	1.9096%
Delaware	19,214	31,462	21,795	63,204	12,800	1,332	1,565	0	0	0	0	0	0	60,446	8,478	220,233	1.9096%
Dist. of Col.	7,713	9,909	3,987	19,247	2,724	458	468	0	2,888	0	0	0	0	0	44,542	2,359	0.4417%
Florida	58,341	72,917	27,659	114,033	16,266	5,519	3,633	28,447	31,710	0	92,231	44,542	5,628	19,189	520,395	4.5116%	
Georgia	55,890	53,485	23,323	67,916	8,424	1,768	2,626	13,990	270	0	89,870	44,112	8,892	11,849	381,815	3.3102%	
Hawaii	17,713	9,624	9,324	37,378	2,724	458	469	0	1,920	0	0	0	0	5,293	7,515	72,590	0.6325%
Idaho	17,713	9,624	9,324	37,378	2,724	458	469	0	1,920	0	0	0	0	5,293	7,515	72,590	0.6325%
Illinois	52,797	71,807	51,983	92,504	26,656	4,397	3,499	0	0	0	0	0	0	91,352	26,778	421,843	3.8572%
Indiana	35,230	40,345	17,360	58,243	6,130	1,460	1,980	11,020	0	0	42,502	27,747	32,078	10,131	284,203	2.4399%	
Iowa	21,504	29,096	23,009	35,075	2,724	511	1,142	0	0	0	0	0	0	5,293	12,141	130,655	1.1310%
Kansas	28,822	30,537	16,103	41,201	4,001	892	1,376	6,302	1,066	0	48,224	9,892	6,034	2,396	192,309	1.6972%	
Kentucky	28,822	30,537	16,103	41,201	4,001	892	1,376	6,302	1,066	0	48,224	9,892	6,034	2,396	192,309	1.6972%	
Louisiana	28,822	30,537	16,103	41,201	4,001	892	1,376	6,302	1,066	0	48,224	9,892	6,034	2,396	192,309	1.6972%	
Maine	7,712	11,658	9,472	14,748	2,723	458	585	0	0	0	0	0	0	7,304	19,972	74,630	0.6470%
Maryland	25,827	35,165	16,882	35,165	22,496	2,565	3,896	0	199,702	0	0	0	0	5,293	1,165,818	10.3573%	
Massachusetts	49,069	51,819	36,553	56,029	19,827	3,152	2,473	22,059	0	0	37,715	18,691	43,628	13,244	350,786	3.0412%	
Michigan	29,861	32,201	12,169	46,208	2,723	1,286	1,520	0	14,159	0	0	0	0	5,293	22,284	167,804	1.4546%
Minnesota	29,861	32,201	12,169	46,208	2,723	1,286	1,520	0	14,159	0	0	0	0	5,293	22,284	167,804	1.4546%
Mississippi	41,157	44,157	34,867	53,867	5,394	1,509	2,090	0	12,904	0	41,291	0	0	14,291	15,381	282,024	2.2717%
Montana	23,707	20,357	6,857	25,289	2,723	458	636	0	2,617	0	0	0	0	5,293	1,922	90,057	0.7807%
Nebraska	12,428	18,802	13,999	27,828	2,723	458	710	0	0	0	0	0	0	5,293	2,671	85,911	0.7446%
Nevada	13,659	11,251	7,555	19,831	2,724	458	432	0	0	0	0	0	0	5,293	1,165,818	10.3573%	
New Hampshire	17,258	17,258	7,168	38,237	31,381	3,965	2,572	0	0	0	0	0	0	67,568	21,661	308,061	2.6707%
New Jersey	18,803	18,803	4,041	25,055	2,723	458	917	0	18,243	0	0	0	0	5,293	1,165,818	10.3573%	
New Mexico	54,330	101,048	140,984	80,853	57,281	7,894	4,811	14,131	22,669	0	50,555	22,340	178,683	38,994	695,776	6.0754%	
New York	54,330	101,048	140,984	80,853	57,281	7,894	4,811	14,131	22,669	0	50,555	22,340	178,683	38,994	695,776	6.0754%	
North Carolina	11,708	13,881	3,525	22,865	2,724	458	576	0	41,395	0	0	0	0	5,293	1,165,818	10.3573%	
North Dakota	96,995	90,169	74,734	23,902	3,810	3,273	5,707	0	0	0	0	0	0	18,960	18,884	399,004	3.4644%
Ohio	59,139	66,995	50,169	74,734	23,902	3,810	3,273	5,707	0	0	9,960	0	0	18,960	18,884	399,004	3.4644%
Oklahoma	20,788	28,315	23,818	32,899	2,723	734	1,223	0	13,095	0	29,297	1,799	17,572	9,452	172,306	1.5025%	
Oregon	40,556	40,556	14,018	54,574	32,887	3,908	4,424	17,592	9,488	0	1,676	1,747	88,098	94,127	518,943	4.4999%	
Pennsylvania	7,713	9,624	9,025	12,167	3,196	458	504	0	0	0	0	0	0	5,293	6,129	54,098	0.4699%
Rhode Island	26,430	27,390	15,346	33,312	2,723	774	1,277	6,393	0	0	46,134	16,574	5,293	4,131	185,747	1.6103%	
South Carolina	26,430	27,390	15,346	33,312	2,723	774	1,277	6,393	0	0	46,134	16,574	5,293	4,131	185,747	1.6103%	
South Dakota	38,607	40,715	27,807	49,254	6,076	1,303	1,799	10,973	20,733	0	38,344	1,034	5,293	4,408	242,123	2.0811%	
Tennessee	116,288	126,218	55,552	174,334	54,065	6,166	5,585	36,414	0	0	121,490	38,051	38,533	25,905	798,802	6.8233%	
Texas	26,837	17,583	5,363	16,798	2,724	716	687	0	0	0	0	0	0	5,293	1,165,818	10.3573%	
Utah	44,535	40,556	31,024	54,574	11,458	2,077	2,092	12,996	0	0	41,240	24,777	21,278	14,833	282,039	2.4025%	
Vermont	33,555	32,573	35,223	20,548	6,655	1,743	1,844	0	46,014	0	0	0	0	13,974	9,960	203,464	1.7841%
Virginia	44,988	40,556	31,024	54,574	11,458	2,077	2,092	12,996	0	0	41,240	24,777	21,278	14,833	282,039	2.4025%	
Washington	12,320	22,763	27,889	22,212	2,723	458	1,034	0	5,223	0	0	0	0	5,293	33,285	128,086	1.1044%
West Virginia	20,933	31,091	12,116	32,410	5,826	1,306	1,709	8,417	0	27,753	38,996	14,650	0	5,293	24,717	175,153	1.5259%
Wisconsin	18,804	15,360	3,524	19,832	2,723	458	585	0	0	0	0	0	0	5,293	2,133	48,172	0.4259%
Wyoming	7,512	11,717	8,202	17,294	2,948	1,247	449	0	0	0	0	0	0	5,293	2,133	48,172	0.4259%
Puerto Rico	1,542,345	1,850,377	1,416,996	2,165,519	544,932	91,219	89,855	275,372	512,490	27,753	976,072	350,081	1,056,712	652,870	11,534,654	100.0000%	
Total																	

**RESOLUTION ON THE REAUTHORIZATION OF SURFACE  
TRANSPORTATION PROGRAMS**

*September 24, 1997*

*WHEREAS the Intermodal Surface Transportation Efficiency Act of 1991, the law which authorizes the Nation's surface transportation programs, expires on September 30, 1997; and*

*WHEREAS the Transportation and Infrastructure Committee has developed legislation, H.R. 2400, the Building Efficient Surface Transportation and Equity Act of 1997 (BESTEA), which provides sufficient funding for the Nation's surface transportation programs, restores integrity to the trust fund principle, and meets the infrastructure needs of the States and metropolitan areas while ensuring fairness; and*

*WHEREAS BESTEA is funded entirely from highway user taxes; and*

*WHEREAS the Fiscal Year 1998 budget resolution contained funding levels for the Nation's surface transportation programs that are insufficient to meet the infrastructure needs of the States and metropolitan areas, to ensure fairness and to prevent a large increase in the surplus balances in the Highway Trust Fund; and*

*WHEREAS BESTEA is consistent with the 1997 budget agreement because BESTEA increases funding for transportation over the 1997 agreement levels only if there are offsetting revenue increases and if the deficit targets are being met.*

*IT IS HEREBY RESOLVED that the Committee on Transportation and Infrastructure adopts the following principles regarding the reauthorization of the surface transportation programs:*

*1. That the Committee approves the general principles and policies contained in BESTEA as amended on this date;*

*2. That the funding levels contained in BESTEA are the minimum necessary to provide adequate funding for our nation's surface transportation programs and to prevent an unacceptably large increase in Highway Trust Fund balances;*

*3. That the Committee's strong preference is to complete action on BESTEA this year but that the Committee will not take such action unless, consistent with a balanced budget, the level of funding in BESTEA is ensured and integrity is restored to the trust funds;*

*4. That the Committee will work to restore integrity to the trust funds and to incorporate funding levels necessary for BESTEA as part of the process for developing the Fiscal Year 1999 Budget Resolution; and*

*5. That the Committee desires an expeditious resolution of these issues.*

*Adopted: September 24, 1997.*

*Attest: Bud Shuster, Chairman.*

## ADDITIONAL VIEWS

While we understand the Committee's rationale for proceeding with a short-term extension of the current highway authorization act, we believe it is important to raise concerns about perpetuating the Disadvantaged Business Enterprise (DBE) program. The bill approved by the Committee renews Section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA; 105 Stat. 1914) without changes. This section, entitled "Disadvantaged Business Enterprises" requires that "not less than 10 percent of the amounts authorized" for highway, transit, motor carrier and transportation research spending be "expended with small business concerns owned and controlled by socially and economically disadvantaged individuals."

## HISTORY OF THE DBE PROGRAM

First enacted in Section 105(f) of the Surface Transportation Assistance Act of 1982 (96 Stat. 2097), the DBE program requires that "not less than 10 percent of the amounts authorized" for highway, transit, motor carrier and transportation research spending be expended on contracts with firms owned or operated by economically and socially disadvantaged individuals.

Current law (15 U.S.C. 637(d)) *presumes* that "Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities, or any other individual found to be disadvantaged by the Administration" are economically and socially disadvantaged. The Small Business Administration takes this authority seriously and has, through regulations, expanded eligibility to Eskimos; Aleuts; Native Hawaiians; persons with origins in Asia Pacific including Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Hong Kong, Taiwan, Laos, Cambodia, Vietnam, Korea, the Philippines, Republic of Palau, Republic of the Marshall Islands, Federated States of Micronesia, Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, and Nauru; and persons with origins in Subcontinent Asia including Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, and Nepal (13 CFR Part 124.105). For those who do not fit these racial or ethnic profiles, social disadvantages can be invoked through (1) "long-term residence in environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged" and (2) "personal experiences of social disadvantage [that] have been substantial, chronic and long-standing" (13 CFR Part 124.105). In a recent editorial, a leading journalist suggested that Members of Congress might even qualify under this definition ("Victims, Victims Everywhere," *Washington Post*, September 14, 1997, page C7). Regulations issued in August 1997, which purport to bring these programs into compliance with recent



court decisions, unfortunately continue these broad definitions (62 Fed. Reg. 43600).

In 1987, through a provision in the Surface Transportation and Uniform Relocation Assistance Act (STURRA; 101 Stat. 132), the DBE program was amended to include business concerns owned and controlled by women, regardless of their economic status. Section 1003(b) of ISTEA continue this presumption.

#### EFFECT OF THE ADARAND COURT DECISIONS

Two cases, decided on behalf of Adarand Constructors, make it crystal clear that race- and gender-based preference programs administered by the federal government must be restructured to provide targeted remedies to only those who have been the victims of specific discrimination.

#### CHALLENGE TO THE SUBCONTRACTING COMPENSATING CLAUSE

Federal agencies have adopted a number of different approaches to meet the requirements of the DBE programs. The Federal Lands Highway Division, a component of the Federal Highway Administration within the U.S. Department of Transportation (USDOT), developed its own race-conscious program to comply with the DBE program. Created through internal contract clauses written pursuant to the Federal Acquisition Regulations (48 CFR 52.219), the Subcontracting Compensation Clause (SCC) provides "incentive payments" to prime contractors who subcontract with DBEs. Payments vary from 1.5 percent to 2 percent of the contract amount if the value of the subcontracts exceeds 10 percent of the total contract value.

The SCC program was challenged by Adarand Constructors, Inc., a construction firm in Colorado whose low bid on a subcontract for highway guard rails was rejected in favor of a higher-bidding DBE. While the federal court and the Tenth Circuit upheld the SCC program, arguing that federal set-asides should be evaluated under lenient judicial review, the Supreme Court rejected these rulings, arguing that to pass constitutional muster, all federal race-conscious programs must be judged by the standard of strict scrutiny (*Adarand Constructors, Inc. v. Peña*, 515 U.S. 200).

#### APPLICATION OF THE STRICT SCRUTINY STANDARD

As defined by case law, strict scrutiny requires the government to prove that race-based programs serve a "compelling governmental interest" and are "narrowly tailored" to satisfy that interest. In applying this test to federal race preference programs for the first time, the high court remanded the *Adarand* case back to the district court for reconsideration.

In June 1997, the United States District Court for the District of Colorado ruled that the Subcontractor Compensation Clause is not narrowly tailored and is therefore unconstitutional (*Adarand Constructors, Inc. v. Peña*, 965 F. Supp. 1556 (D. Colo. 1997)). However, the court went a step further and stipulated that this ruling "effectively precludes the implementation of [all] statutes or regulations that grant presumptive eligibility for government preference in contracting on the basis of race, i.e., the use of presumptions of

social and economic disadvantages in Section 8(d) of the Small Business Act”—the very authority cited in the statutes authorizing the DBE program.

Case law stipulates that the only compelling governmental interest for race preferences is the remedying of past discrimination. To determine whether a race-based program is “narrowly tailored,” the following factors are to be considered: (1) the efficacy of alternative remedies; (2) the planned duration of the remedy; (3) the relationship between the percentage of minority group members in the relevant population or workforce; (4) the availability of waiver provisions if the hiring plan could not be met; and (5) the effect of the remedy on innocent third parties. (*United States v. Paradise*, 107 S.Ct. 1053)

In finding that these programs and the regulations promulgated to implement them are not narrowly tailored, Judge Kane wrote:

\* \* \* the presumptions of disadvantage set out in federal statutes and regulations are not narrowly tailored to those who have suffered the effects of prior discrimination in that they allow implementation in such a way as to permit an absolute preference to certain business entities based solely on their race.

This passage is footnoted to read, “Indeed, under these standards, the Sultan of Brunei would qualify” (Footnote 17). If one of the world’s wealthiest men qualifies by virtue of his ethnic heritage, claims that these programs are narrowly constructed are indeed absurd.

Judge Kane expanded on this point later in the opinion stating that the definition of socially and economically disadvantaged individuals relied upon in the DBE authorizing legislation “grants the presumption of both social and economic disadvantage \* \* \* to members of the listed minority groups *without reference to their economic status* [emphasis added] \* \* \*”.

#### SPECIFIC RULING THAT THE DBE PROGRAM IS UNCONSTITUTIONAL

In its final order, the court leaves no doubt of its intentions, ordering that “Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act (STURRA), Section 1003(b) of the Intermodal Surface Transportation Efficiency Act (ISTEA), Section 8(d) of the Small Business Act (codified at 15 USC 637(d)) \* \* \* and the regulations promulgated thereunder \* \* \* are unconstitutional \* \* \*”. A quick review of these statutes reveal that Section 106(c) of STURRA and Section 1003(b) of ISTEA authorize the Disadvantaged Business Enterprise Program. These laws specifically cite Section 8(d) of the Small Business Act for purposes of defining eligibility in the DBE program. Those who argue that the DBE program is not at issue in the *Adarand* case are seriously mistaken.

#### OTHER RECENT COURT CASES

While the Supreme Court and district court rulings in *Adarand* have received considerable attention, a number of other cases deserve congressional review.

## CROSON TEST FOR STATE AND LOCAL PROGRAMS

The first case to apply the strict scrutiny test to programs involving racial classifications dealt only with state and local preference programs. Decided by the Supreme Court in 1989, this landmark decision, *Richmond v. J.A. Croson Co.* (488 U.S. 469), applied in strict scrutiny review to state and local minority set-aside programs. The court found that for a racial classification to survive strict scrutiny it must be a narrowly tailored remedy for past discrimination. The court continued that “[f]indings of societal discrimination will not suffice; the findings must concern prior discrimination by the government unit involved.” In citing the *Croson* case, the remanded *Adarand* district court decision found that “[t]here appears to be only one compelling interest recognized by the Supreme Court to justify racial classifications, namely the remedying of past wrongs.” the *Adarand* decision, which applied strict scrutiny to federal preference programs, was a logical extension of *Croson*.

## HOUSTON METRO

In April 1996, the United States District Court for the Southern District of Texas questioned the constitutionality of the Houston transit authority’s DBE program, and blocked use of the program by Houston METRO pending final disposition of the case (*Houston Contractors Association v. Metropolitan Transit Authority, et al.*, United States District Court for the Southern District of Texas, Houston Division, Civil Action No. H-93-3651). The court’s temporary restraining order prohibits METRO from utilizing race- or gender-based preferences in the selection or award or construction contracts—making it impossible for METRO to comply with the federally-approved DBE program. In response to the court’s ruling METRO designed a race-neutral program to provide assistance to economically-disadvantaged small businesses. The USDOT refused to recognize this alternative program and withheld federal funding from METRO for nearly seventeen months.

It is interesting to note, however, that the Supreme Court’s 1987 ruling in *South Dakota v. Dole* (483 U.S. 203) held that Congress may not use its spending power to induce states to engage in unconstitutional activities. Although the case did not focus on the executive branch, it is not difficult to imagine that the same prohibition should hold true for the various departments and agencies of the federal government.

Just a few days ago, the USDOT reconsidered its decision and granted Houston METRO a six-month exemption from the requirements of the DBE program. This temporary waiver is conditioned upon certification by the USDOT that Houston’s race-neutral small business program is in “substantial compliance with 49 CFR Part 23 by achieving acceptable DBE participation levels.” If the Federal Transit Administration concludes that Houston’s small business program does not substantially comply with the regulations governing the DBE program, the waiver will expire at the end of the six-month period. During this trial period, Houston must also continue certifying applicants as DBEs. (September 19, 1997, letter from Mr. Gordon Linton, Administrator of the Federal Transit Administra-

tion to Mr. Robert MacLennan, General Manager, Metropolitan Transit Authority.)

#### MONTEREY MECHANICAL

Earlier this month, the Ninth Circuit Court of Appeals declared unconstitutional a California law requiring contractors on state projects to subcontract work to firms owned by minorities and women (*Monterey Mechanical Co. v. Wilson*, No. 96-16729, United States Court of Appeals for the Ninth Circuit, 1997). The state statute set goals of not less than 15 percent participation by minority business enterprises and not less than five percent participation by women-owned firms. Reversing the lower court ruling, the court of appeals found that "[t]he state has not even attempted to show that the statute is narrowly tailored to remedy past discrimination" and that racial and gender classifications will survive strict scrutiny only if they are narrowly tailored measures furthering compelling governmental interests.

#### ADDITIONAL CHALLENGES

Based on existing case law, the DBE program raises significant constitutional questions. No evidence has been presented to this Committee that actual discrimination has occurred within the transportation construction industry. No evidence has been presented that race-neutral remedies were attempted and found deficient. No evidence has been presented justifying the use of the program on a nation-wide basis. No statistical evaluations have been presented justifying the use of the program in any given market. No evidence has been presented justifying that fact that the program does not include a procedure for individualized inquiries into whether a particular DBE has suffered from past discrimination.

Based on these and other reasons, minority set-aside programs has been successfully challenged in San Diego, California; Dade County, Florida; Atlanta, Georgia; Columbus, Ohio; Philadelphia, Pennsylvania; Washington, DC; Louisiana; Michigan; and Wisconsin. Within the last two years, suits challenging state- and local-run DBE programs have been filed against Connecticut, Florida, Maryland, Minnesota, Mississippi, New Mexico, Utah, the city of Albuquerque, the Los Angeles County Metropolitan Transportation Authority, and the San Francisco Bay Area Rapid Transit District.

These cases are not aberrations; in fact, they are just the tip of the iceberg. We strongly believe that such challenges will continue to be filed in states and localities around the country.

#### ADDITIONAL CONCERNS REGARDING PRESUMPTION OF ECONOMIC DISADVANTAGE

One issue that must be addressed in any review of the DBE program is the presumption that certain racial and ethnic classes and women, regardless of their economic status, are disadvantaged. The regulations issued by USDOT to implement this program specifically prohibit states from verifying the economic status of the applicant:

\* \* the basic meaning of a presumption of social and economic disadvantage is that the recipient *assumes* that

a member of the designated groups is socially and economically disadvantaged. In making certification decisions, the recipients relies on this presumption, and does not investigate the social and economic status of individuals who fall into one of the presumptive groups. (49 CFR Pt. 23, Subpt. D, App. A)

Proposed regulations promulgated as recently as May 30, 1997, state, "Recipients would be prohibited from requiring owners to prove their social and economic disadvantage as part of the application process. The applicant would not be required to submit actual personal financial data (e.g., personal income tax returns or a detailed financial statement) \* \* \*" (*Federal Register* Vol. 62, No. 104, May 30, 1997, page 29565).

Because the DBE program is not economically targeted, the very wealthy benefit at taxpayers' expense. If Leona Helmsley or Ivana Trump established small construction companies they would qualify for the minority set-aside at an increased cost to the federal government. And as the district court found in the *Adarand* case, an extremely wealthy Asian sultan would also qualify. In addition to our concerns about the constitutionality of these classifications, we do not believe that this is an appropriate use of tax dollars.

#### CONCLUSION

We strongly believe that the current DBE program is unconstitutional. Unfortunately, the legislation approved by the committee continues this program without changes. The DBE program can be a useful tool for remedying past discrimination. However, it must be amended to comply with recent court cases requiring minority set-aside programs to be narrowly targeted to remedy specific instances of past discrimination.

Despite the Clinton Administration's claims that it is in the process of reviewing all government preference programs in light of the *Adarand* case, no significant changes have been made in the administration of these programs. This Committee should work closely with the USDOT to ensure that set-aside programs within the transportation arena meet the strict scrutiny test.

In light of recent court decisions, and given the likelihood that the filing of challenges will only increase, this Committee and the Congress as a whole would be remiss to not conduct a comprehensive review of preference programs.

We call on the Committee to address these issues and look forward to working together to ensure that federal programs do not violate the constitutional rights of any American.

ASA HUTCHINSON.  
HOWARD COBLE.  
FRANK RIGGS.  
JOANN EMERSON.

## MINORITY VIEWS—H.R. 2516, SIX-MONTH EXTENSION OF ISTEA

We are submitting these views to rebut the views submitted by four of our colleagues criticizing the disadvantaged business enterprise (DBE) program in the reported bill.

The reported bill extends ISTEA programs for six months, subject to all requirements of existing law, including the DBE program. The DBE program ensures that small business concerns which are owned and controlled by socially and economically disadvantaged individuals will have a fair opportunity to compete for federally-funded highway and transit contracts.

The DBE program was also continued by the Committee's six-year reauthorization bill, H.R. 2400, which has been endorsed by the Committee by voice vote and is cosponsored by 62 of the Committee's 73 Members (including 3 of the 4 signers of the separate views which are critical of the DBE program).

We strongly support continuation of the DBE program. It would have been particularly inappropriate to disturb this valuable program in a short-term extension of ISTEA, in which no policies are changed. But, even more importantly, the DBE program should be continued because it furthers one of our highest national goals; an equal opportunity for all citizens to participate fully in the national economy.

Although we have made considerable progress in encouraging participation by minority-owned businesses in the Federal-Aid highway and transit programs, we still need a legislative mechanism to preserve our gains and encourage further advances.

During the late 1970's, prior to the implementation of the DBE program for Federal-Aid highway contracting, minority-owned firms participated in only about 2 percent of all contracts in the Federal-Aid Highway Program. Minority participation increased sharply in the 1980s after enactment of the program. By 1995, participation by minority and women-owned businesses in federally-funded highway contracts reached about 9 percent.

There is good reason for concern that without a federal program in place, minority participation will decline substantially. When DBE programs end, many prime contractors return to the same exclusionary practices that denied minorities and women the chance to compete for business before the DBE program was created. To cite just a few examples, in the city of Richmond, Virginia, after a local DBE program was ended, minority contracting declined from 30 percent of total contracts to 3 percent. In Michigan, within 9 months of ending the State DBE program, minority and women-owned businesses were completely shut out of State highway construction projects, getting no contracts at all. In Tampa, when a DBE program was ended, minority participation in government contracts declined from 22 percent to 5 percent.

These unfortunate examples are confirmed by trends in the construction industry generally. Minority-owned businesses represent 9 percent of all construction firms, yet they receive only about 5 percent of all businesses receipts. Women own one-third of all construction firms, yet get only 19 percent of business receipts.

Discrimination in both contracting and access to capital in financial markets continues to limit the ability of minority and women-owned firms to reach their full potential. For instance, white-owned construction firms receive 50 times more loan dollars than black-owned firms with identical equity. Studies have concluded that, other factors being equal, minorities are 15–20 percent less likely to receive venture capital or business loans than white-owned firms.

It should be clearly understood that the DBE program in ISTEA is not a quota program. The ten percent goal is a national target for DOT; state and local recipients of DOT funding set their own goals for DOT participation in construction projects based on the availability of disadvantaged businesses in their markets. There is never an absolute requirement that a particular goal be met.

Contrary to arguments which have been made, there is no legal or constitutional reason to end or modify the DBE program at this time. The *Adarand* decision by the United States Supreme Court did not find that the DBE program was unconstitutional. Rather, *Adarand* merely heightened the standard under which federal affirmative action programs are to be reviewed. Under *Adarand*, affirmative action programs must satisfy a “strict scrutiny standard” requiring that the program be based on a “compelling government interest” and “narrowly tailored” to serve that interest. Since *Adarand* only a single lower court has determined that DOT’s DBE program does not satisfy a strict scrutiny standard. DOT disagrees with that decision and will appeal.

Moreover, DOT has also initiated rulemaking to address the concerns raised by the Court. The District Court in Colorado held that the program was not narrowly tailored to limit racial preferences to the minimum needed to remedy past discrimination. DOT does not agree with this decision and will appeal.

In addition, DOT has initiated rulemaking to address the concerns raised by the Court. DOT’s rulemaking is designed to limit racial preferences. DOT proposes to give more flexibility to the states to set DBE goals. States would be allowed to reach their goals by using race-neutral “remedies”, such as outreach training programs, technical assistance and assistance in financing. Race and gender-conscious mechanisms, such as subcontracting goals, will be used only to the extent that race-neutral mechanisms fail. DOT is also preparing to limit the time period in which a minority firm could qualify for DBE program participation.

Thus, because the courts have not spoken finally on this issue and because DOT is taking affirmative steps to address concerns, we believe it is premature at this time to make any drastic, possibly regrettable, changes in existing law. We should allow the judicial and administrative processes to be completed before changing a long-standing program which has given many small, disadvantaged businesses an opportunity to move into the mainstream of our economy.

Finally, we emphasize that support within the Committee for the DBE program is not limited to the Members who signed these views. We learned that views critical of the DBE program would be filed only a few hours before the deadline for filing a rebuttal, on a Friday evening when the House had recessed and many Members were traveling to their Districts. Had more time been available, we are confident that many additional Committee Members would have joined in these views in support of the DBE program.

The DBE program is a laudable program and, for many of us, our support for ISTEA reauthorization is premised on its continuation without change.

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